Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

Promoting Technological Solutions to Combat Contraband Wireless Device Use in Correctional Facilities	)))	GN Docket No. 13-111

To: The Commission

REPLY COMMENTS OF
THE BOEING COMPANY

The Boeing Company ("Boeing") provides these reply comments in response to the comments that were filed addressing the Commission's Notice of Proposed Rulemaking ("Notice") to facilitate the development of technological solutions for neutralizing contraband wireless devices in correctional facilities.[1] Boeing subsidiary Digital Receiver Technology, Inc. ("DRT") manufactures a line of wireless location and management devices that emulate a base station to detect and manage wireless handsets used for unlawful purposes in a limited geographic area without significantly affecting normal traffic. Such devices can provide federal, state, and local law enforcement and prison officials an effective wireless management solution while avoiding service interruptions to lawful devices.

The substantial response to the Commission's Notice shows wide agreement that preventing the unlawful use of contraband devices by inmates is an important public safety priority that requires prompt action. Therefore, this issue is too important to be left to the

[1] *Promoting Technological Solutions to Combat Contraband Wireless Device Use in Correctional Facilities, GN Docket No. 13-111*, et al., Notice of Proposed Rulemaking, FCC 13-58 (2013) ("*NPRM*").

uncertainties of lease negotiations or wireless carriers' business decisions. Instead, the Commission can and should require carriers to permit prison authorities and their designees to use wireless spectrum for managed access systems without charge for the purpose of neutralizing the illegal use of contraband cell phones. Such a requirement is fully within the Commission's authority to manage spectrum in the public interest, and is logically consistent with the carriers' obligation to ensure that their service is not being used unlawfully. In addition, the Commission has the authority to order wireless carriers to suspend service to identified contraband cellphones based on a request from prison officials. Individualized and repetitive Commission orders or court orders for each suspension request are not required and will inherently delay the processing of suspension requests. The Commission should therefore reject the carriers' arguments that termination should only be pursuant to a court order.

Some commenters urge the Commission to adopt extensive technical standards and notification requirements that would make managed access and detection systems more expensive and less effective. These comments fail to acknowledge that, as multiple parties have explained, the technical and procedural safeguards inherent in managed access and detection systems provide assurance against loss of service to lawfully used devices. These safeguards obviate the need for complex regulation and court actions that have negligible practical utility and would significantly increase the cost of managed access and detection systems without a corresponding benefit to legitimate wireless device users and wireless carriers.

I. CARRIERS SHOULD BE REQUIRED TO PERMIT USE OF WIRELESS SPECTRUM TO NEUTRALIZE CONTRABAND CELL PHONES IN PRISONS

The record shows broad-based support for requiring carriers to permit the use of wireless spectrum to facilitate neutralizing the public safety threat of contraband cell phone use in prisons.

It is clear that "CMRS use within prisons is an unintended negative consequence of the growth of CMRS in recent years."[2] The Commission has ample authority to require carriers to assist with remediating the threat of such use. As Boeing explained in its comments, the Communications Act clearly provides that "spectrum is a public resource"[3] and its use is subject at all times to the Commission's "broad authority to manage spectrum…and modify[] spectrum usage conditions in the public interest."[4] Commenters also recognize that carriers should not have discretion to refuse to provide the means or access to the spectrum necessary to remediate the risk created by their service.[5] This is consistent with Boeing's initial comments that the Commission can and should consider approaches to authorizing managed access systems other than the spectrum leasing approach discussed in the NPRM.[6]

Thus, Boeing concurs with the observation of commenters that the NPRM's focus on spectrum leases does not address the true problem of the illegal use of contraband cell phones to conduct activities not permitted by federal, state, or local authorities in prisons.[7] Tecore notes that "even assuming that all parties are cooperative and want to conclude an arrangement, the

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[2] Comments of the Indiana Department of Corrections at 1 (July 18, 2013) ("*Indiana Comments*").

[3] Reexamination of Roaming Obligations of Commercial Mobile Radio Service Providers and Other Providers of Mobile Data Services, WT Docket No. 05-265, Second Report and Order, FCC 11-52, ¶ 62 (rel. Apr. 7, 2011) ("*Data Roaming Order*").

[4] *Id*.

[5] *See* Comments of the American Correctional Association at 3 (Jul. 18, 2013) ("*ACA Comments*") (asking the Commission to require all CMRS to agree to managed access leases of their spectrum); Comments of Tecore Networks at 10 (July 18, 2013) (proposing a Commission rule obligating carriers to enter into lease agreements) ("*Tecore Comments*").

[6] Comments of The Boeing Company at 3-5 (July 18, 2013) ("*Boeing Comments*").

[7] Comments of NTCH Inc. at 3 (July 18, 2013).

process [of negotiating spectrum leases with every carrier] inevitably takes a considerable amount of time."[8] The California Department of Corrections, for instance, will "need to negotiate and file close to 200 agreements."[9] The Commission's streamlining proposals do little to speed this process because they largely affect the Commission's processing of the leases, not the much lengthier negotiations of lease terms and pricing that corrections institutions must undertake with each carrier. In addition, Tecore accurately observes that carriers remain "free to charge 'what the market will bear'" for spectrum leasing rights, potentially resulting in deployments being "delayed, deterred, or rendered uneconomic" by such carrier negotiations.[10]

The most streamlined solution, and the most appropriate, is for the Commission to consider wireless spectrum within correctional institutions to be the wireless carriers' "contribution to…solving the problem of contraband device use."[11] As Boeing explained in its comments, the Commission has ample authority and significant pragmatic justification to require wireless carriers to allow prisons to manage the cell phone signals within the confines of correctional facilities to ensure only the legal and authorized transmission of voice and data.[12]

[8] *Tecore Comments* at 10.

[9] Comments of the California Department of Corrections at 3 (July 18, 2013).

[10] *Tecore Comments* at 10.

[11] *Id*.

[12] *Boeing Comments* at 3-9.

II. INTERRUPTION OF SERVICE TO CONTRABAND DEVICES DOES NOT REQUIRE A COURT ORDER

In its NPRM, the Commission appropriately considers requests for suspension of service to contraband devices to be a coordination between prison officials and wireless providers.[13] CTIA attempts to complicate this simple interaction by suggesting that termination requests "raise[] many complex questions that have not been fully articulated by the Commission in the NPRM."[14] In reality, the Commission has clearly identified and addressed the simple questions applicable to suspending service to wireless devices identified as contraband.

Verizon nonetheless presses for termination of service to a contraband wireless device to be carried out only pursuant to a court order,[15] citing its limited experience with requests from detection system operators, the unknown potential volume of requests, and the amount of effort needed to identify a particular device given the information acquired through a detection system.[16] Verizon does not, however, explain how interposing an additional step in this process would alleviate its concerns. Routing requests through a court order would do nothing to reduce the volume of devices requested for service suspension, nor would it change the information available to the carrier to act on the request. Indeed, to the extent that the volume of requests or quality of the data provided were to pose burdens on the provider, a direct interface between the detection system operator and the carrier would permit the greatest streamlining of operations.

Verizon and AT&T also neglect to consider the additional burden that their stance would impose on the finite resources of the Commission and the courts. In addition to being legally

[13] *NPRM*, ¶ 66.

[14] Comments of CTIA at 2 (July 18, 2013) ("*CTIA Comments*").

[15] Comments Verizon Wireless at 5 (July 18, 2013) ("*Verizon Comments*").

[16] *Id.* at 5-6.

unnecessary, the proposal to require individualized orders for each service suspension would result in a series of highly repetitive requests that would consume court or Commission administrative resources. Whether routed through the Commission or the courts, each administrative review would multiply the effort of what is, and should be treated as, a routine request under a standing Commission order to suspend service to devices identified as contraband.

In lieu of pragmatic arguments, AT&T instead asserts that "the FCC cannot lawfully delegate its statutory authority to a third party."[17] Of course, this argument has no basis in law. As the Commission explained at length in the NPRM, the Commission's role as spectrum steward and its authority to "prescribe such restrictions and conditions"[18] empowers it to require carriers to terminate service to an unlawful device. Whether the information to establish a device's contraband status comes from the Commission or from a prison official is immaterial; the Commission order that AT&T seeks will be the one resulting from this proceeding, which will direct carriers to respond to the suspension requests of prison officials. Thus, the Commission is empowered to require—and well justified in requiring—wireless carriers to terminate service to an identified contraband device without resorting to repetitive court orders.

III. NO EVIDENCE EXISTS THAT INVASIVE TECHNICAL STANDARDS OR EXPANSIVE NOTIFICATION REQUIREMENTS FOR MANAGED ACCESS AND DETECTION SYSTEMS ARE NECESSARY OR DESIRABLE

Several parties propose extensive and costly technical standards and notification requirements for operators of managed access systems, apparently out of concern that such systems have the potential to inadvertently identify non-contraband wireless devices for service

[17] Comments of AT&T Inc. at 3 (July 18, 2013) ("*AT&T Comments*").

[18] *NPRM*, ¶ 60 (quoting 47 U.S.C. § 303(r)).

suspension. No party, however, has asserted any examples of improper capture that would justify the range of burdensome requirements proposed, despite years of increasing usage of managed access and detection systems at correctional facilities nationwide. In fact, managed access and detection systems currently incorporate sufficient technical and procedural safeguards to ensure that legitimate users are well protected from inadvertent service interruption, and unnecessary additional requirements would increase the cost and delay implementation of these urgently-needed systems.

As the Commission and the wireless carriers acknowledge, there have been "numerous deployments and trials in states such as California, Maryland, Mississippi, South Carolina, and Texas."[19] The Mississippi Department of Corrections has operated a managed access system at the Mississippi State Penitentiary since 2010, and has operated a second system at the South Mississippi Correctional Institution since 2012,[20] yet in this time there have been no reports of improper capture of any legitimate wireless devices. Likewise, ShawnTech reports that it has completed four pilot programs and two permanent installations for one of the largest correctional agencies in the world but that "[t]o date we have not had any issues with our secure private coverage area exceeding beyond the correctional facilities' secure fenced area."[21]

The carriers also report no incidents of misidentification. Verizon acknowledges that it has received a sample list of contraband devices from a detection provider and a request to suspend 911 access to devices from a managed access provider,[22] but makes no claim that any of

[19] *CTIA Comments* at 2 (citing *NPRM*, ¶ 15).

[20] *NPRM*, ¶ 7-8; Comments of Mississippi Department of Corrections at 1 (July 18, 2013) ("*Mississippi Comments*").

[21] Comments of ShawnTech at 1-3 (July 18, 2013).

[22] *Verizon Comments* at 6.

the devices in the requests were improperly identified as contraband, instead only noting that some of the devices were not Verizon subscriber devices.[23] AT&T hypothesizes that a wireless device may be inadvertently identified as contraband,[24] but cites to no technical or anecdotal evidence that would indicate a significant risk of such misidentification. The Mississippi Department of Corrections reports that it has "made efforts to terminate the service of contraband wireless devices…with the cooperation of the wireless provider" but does not report any instances where a provider reported that a device was inaccurately identified.[25] Thus, the record does not indicate an appreciable risk of misidentification, nor does it support the imposition of burdensome technical standards to address this hypothetical risk.

In light of the absence of evidence of a risk of misidentification, the Commission should not impose invasive technical regulation. Such unnecessary requirements would drive up the cost of developing and deploying such systems and would delay their availability while standards are developed. Establishing effective technical regulations would also be extremely difficult. As corrections officials have explained, correctional facilities "are all very unique and require flexibility"[26] in the specifications of devices deployed in differing facilities, and "the real problem is finding the most cost-effective solutions for correctional facilities that vary greatly in their physical characteristics."[27] Ultimately, "the greatest limitation on correctional agencies is

[23] *Id.*

[24] *AT&T Comments* at 7.

[25] *Mississippi Comments* at 1.

[26] *ACA Comments* at 1.

[27] *Indiana Comments* at 2.

their budget"[28] and "absolute requirements would only drive costs up"[29] for correctional institutions and for taxpayers.

The NPRM proposed a limited and reasonable notification requirement of sending a SMS warning to affected devices with contact information to resolve any cases of misidentification. By contrast, several parties proposed requirements to notify nearby residents, businesses, and 911 authorities.[30] Such expansive notification requirements are unnecessary due to the technical and procedural measures already in place. Because there is no evidence of any substantial risk of misidentification of legitimate devices, such requirements would unnecessarily erect additional barriers of cost and delay to the deployment of these systems without providing any appreciable benefit to lawful users. The Commission should therefore refrain from adopting detailed technical standards and community notification requirements.

IV. CONCLUSION

The comments are unanimous that the Commission has an important role in facilitating technological solutions to combat the public safety risk of the unlawful use of contraband cellphones in prisons. Many commenters also recognize that this important public safety matter should not be left to carriers' business decisions or the uncertainties of negotiation. Instead, the Commission has ample authority and practical justification to require carriers to permit the use of wireless spectrum by corrections officials and their designees to manage cell phone usage amongst the prison population without being charged fees to prevent unlawful activity. Further, a court order is not and should not be required to suspend service to unlawful contraband

[28] *ACA Comments* at 2.

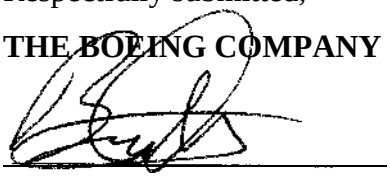
[29] Comments of the Florida Department of Corrections at 2 (July 18, 2013).

[30] *Id.* at 1; Comments of the National Emergency Number Association at 1 (July 18, 2013).

wireless devices. The Commission has ample authority to order carriers to suspend service to an identified contraband cell phone upon notice from prison officials or their designees. Finally, the Commission should not adopt unnecessarily invasive technical and notification requirements that would unnecessarily increase the costs and delay the implementing systems to prevent unlawful activity, especially when there is no evidence showing the existing technical and procedural safeguards are insufficient to protect legitimate wireless users.

Respectfully submitted,

THE BOEING COMPANY

By: 

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